

Christopher L. Kearney, 6/20/2007

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| <p style="text-align: right;">Page 13</p> <p>1 Road shop?</p> <p>2 A. They -- well, actually, it was</p> <p>3 the same -- the same time. I just didn't</p> <p>4 want mail going to Red Bank Road with nobody</p> <p>5 there or UPS deliveries made to a shop as</p> <p>6 most of the time no one was there, so</p> <p>7 simultaneously.</p> <p>8 Q. What time -- at what point in</p> <p>9 time did the Red Bank Road shop close?</p> <p>10 A. In October of 2000.</p> <p>11 Q. And what was the reason for it</p> <p>12 closing in October 2000?</p> <p>13 A. I got a letter, I believe, and</p> <p>14 it's -- I remember this because it's -- it's</p> <p>15 a important letter as far as I'm concerned as</p> <p>16 far as my future, October 2nd of 2000 from</p> <p>17 Mr. Hughes of DMS telling me that I hadn't</p> <p>18 met my obligations and there was some</p> <p>19 suspected fraud or -- on my tax returns and</p> <p>20 that I was only going to get one more check</p> <p>21 after nine years -- maybe not nine years --</p> <p>22 eight -- seven, eight -- if I didn't give</p> <p>23 them a laundry list of financial documents,</p> <p>24 medical documents. It was a big surprise.</p> | <p style="text-align: right;">Page 15</p> <p>1 MR. ROBERTS: Objection. Asked</p> <p>2 and answered May 10, 2004 deposition over the</p> <p>3 course of approximately 20 pages of</p> <p>4 deposition testimony. Go ahead.</p> <p>5 MR. MEAGHER: Objection is just</p> <p>6 asked and answered, counselor. You're</p> <p>7 wasting time.</p> <p>8 MR. ROBERTS: I'll state my</p> <p>9 objection as I wish, Your Honor.</p> <p>10 MR. MEAGHER: Go ahead and</p> <p>11 answer, please.</p> <p>12 A. The business was building</p> <p>13 machines and designing, some consultation</p> <p>14 work.</p> <p>15 Q. At the time you closed the Red</p> <p>16 Bank shop, did you have a contract with any</p> <p>17 clients to build machines?</p> <p>18 MR. ROBERTS: Objection. Asked</p> <p>19 and answered May 10, 2004 deposition. Go</p> <p>20 ahead.</p> <p>21 A. Yes, I did.</p> <p>22 Q. With what companies?</p> <p>23 MR. ROBERTS: Objection. Asked</p> <p>24 and answered May 10, 2004. Go ahead. Chris,</p> |
| <p style="text-align: right;">Page 14</p> <p>1 Big surprise.</p> <p>2 Q. And how do you relate that to</p> <p>3 the Red Bank Shop closing?</p> <p>4 A. I decided at that time that</p> <p>5 since I was getting one more check, unless I</p> <p>6 did all these things, that I needed to go</p> <p>7 somewhere where I was living basically hand</p> <p>8 to mouth. I moved to -- decided to move to</p> <p>9 Wooster where my mother is and where a couple</p> <p>10 brothers are so that I had an apartment so</p> <p>11 that I could live less expensively.</p> <p>12 Q. So without the disability check</p> <p>13 you could not afford to keep the Red Bank</p> <p>14 shop open after October 2000?</p> <p>15 A. That's correct.</p> <p>16 Q. What was the business of Kenwood</p> <p>17 Technologies in October 2000?</p> <p>18 MR. ROBERTS: Objection. Asked</p> <p>19 and answered May 10, 2004. Go ahead.</p> <p>20 Q. Go ahead and answer.</p> <p>21 A. Could you repeat the question?</p> <p>22 Q. Yes. What was the business of</p> <p>23 Kenwood Technologies at the time the Red Bank</p> <p>24 shop closed in October 2000?</p> | <p style="text-align: right;">Page 16</p> <p>1 you need to let me to finish speaking my</p> <p>2 objections. She can take us both at the same</p> <p>3 time.</p> <p>4 A. Okay. I can't remember. I'm</p> <p>5 sorry.</p> <p>6 Q. What kind of machines were you</p> <p>7 manufacturing or did you have contracts to</p> <p>8 manufacture in October 2000?</p> <p>9 MR. ROBERTS: Objection. Asked</p> <p>10 and answered. Go ahead.</p> <p>11 A. They were parts feeding systems.</p> <p>12 Q. Where are the business records</p> <p>13 of Kenwood Technologies?</p> <p>14 A. That's what I would like to</p> <p>15 know. You haven't provided the business</p> <p>16 records. I provided a stack of two, three</p> <p>17 thousand pages.</p> <p>18 MR. ROBERTS: Answer the</p> <p>19 question.</p> <p>20 A. We've been asking for five</p> <p>21 years.</p> <p>22 MR. ROBERTS: Answer the</p> <p>23 question.</p> <p>24 A. They're in your possession.</p> |

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1 They're in my possession too.
 2 Q. I'm sorry. They're in your
 3 possession too? I don't understand.
 4 A. I made a copy in case we had to
 5 go to court.
 6 Q. Okay. So you have a copy of
 7 Kenwood Technology's business records?
 8 A. Yes. And so do you. *Kenwood records*
 9 Q. That's why I'm asking you
 10 questions here at a deposition.
 11 A. Okay. I'm answering.
 12 Q. Were there any contracts you
 13 were unable to fulfill because you closed the
 14 shop in October 2000?
 15 MR. ROBERTS: Objection. Asked
 16 and answered. Go ahead.
 17 A. I don't recall.
 18 Q. So as you sit here today you
 19 don't know of any contracts that Kenwood
 20 Technologies was unable to complete because
 21 of the closure of the Red Bank shop, is that
 22 correct?
 23 MR. ROBERTS: Objection. Asked
 24 and answered May 10th, 2004. Asked and

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1 answered June 20th, 2007. Go ahead.
 2 A. I had a lot of things I was
 3 working on. I had a lot of outstanding
 4 quotes to follow up on and I had a machine
 5 built that was special. Was going to take it
 6 to a trade show in October in Dayton --
 7 Dayton, Ohio. I paid \$800 to the exhibition
 8 hall and once I talked to Robert Mills and he
 9 said he doesn't know if they're going to send
 10 me anymore checks I just -- I folded up. I
 11 mean, I just decided right then not to take
 12 that machine to the show because I was too
 13 bummed out and I didn't want to spend anymore
 14 money on hotel, traveling, putting it up
 15 there, but I had already paid the \$800 fee to
 16 show this particular machine which was new.
 17 MR. MEAGHER: Would you read
 18 back my question, please?
 19 (Record read by Reporter.)
 20 A. No, I completed --
 21 MR. ROBERTS: Chris, he just
 22 asked the question to be read back, he didn't
 23 ask you another question.
 24 DEPONENT: Oh, I'm sorry.

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1 Q. Can you identify any contracts
 2 that Kenwood Technologies was unable to
 3 fulfill due to the closure of the Red Bank
 4 shop?
 5 MR. ROBERTS: Objection. Asked
 6 and answered May 2004. Asked and answered --
 7 A. I can't remember --
 8 MR. ROBERTS: -- June 20, 2007.
 9 A. -- or recall any.
 10 MR. ROBERTS: Chris --
 11 DEPONENT: Oh, I'm sorry.
 12 MR. ROBERTS: -- she can't take
 13 down both of us at the same time.
 14 DEPONENT: Okay.
 15 MR. ROBERTS: You need for me to
 16 finish.
 17 DEPONENT: Okay.
 18 MR. MEAGHER: And your answer,
 19 sir, please?
 20 MR. ROBERTS: Objection. Asked
 21 and answered May 2004. Asked and answered
 22 June 2007. Go ahead.
 23 A. I don't recall.
 24 Q. Who were the employees of

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1 Kenwood Technologies at the time you closed
 2 the Red Bank shop?
 3 MR. ROBERTS: Objection. Asked
 4 and answered.
 5 A. One employee was my brother,
 6 John Kearney.
 7 Q. Any others?
 8 MR. ROBERTS: Objection. Asked *pl 003*
 9 and answered.
 10 A. A man named Don Dayton.
 11 Actually -- yeah, Dayton. They were
 12 employees.
 13 Q. Any others at the time you
 14 closed the Red Bank shop?
 15 MR. ROBERTS: Objection.
 16 A. No.
 17 Q. Did Mr. Dayton pass away at some
 18 point in time?
 19 MR. ROBERTS: Objection. Asked
 20 and answered.
 21 A. Yes.
 22 MR. MEAGHER: Certainly that
 23 wasn't asked.
 24 MR. ROBERTS: Yes, it was.

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1 Red Bank shop.
 2 A. Don's title -- Don was the --
 3 was an engineer -- electrical engineer and he
 4 didn't really have a title, I mean.
 5 Q. He just did the electrical
 6 engineering work?
 7 A. Yes.
 8 Q. What was his -- what were his
 9 hours on a weekly basis with Kenwood
 10 Technologies in 2000 before the shop closed?
 11 A. They were -- they were
 12 part-time. I don't know if it was 10 hours a
 13 week, 20, 15.
 14 Q. Was he also paid on an hourly
 15 basis or some other form of payment?
 16 A. Don was paid on -- on an
 17 estimated hourly basis and it was some figure
 18 per month, 600 or something like that.
 19 Q. Six hundred dollars or 600
 20 hours?
 21 A. \$600.
 22 Q. I'm sorry. I still didn't hear
 23 you. Dollars?
 24 A. Dollars.

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1 Q. Okay. Thank you. Sorry.
 2 A. Okay.
 3 Q. Describe the machine that you
 4 had built for the trade show, please.
 5 MR. ROBERTS: Objection. Asked
 6 and answered May 2004. Go ahead.
 7 Q. Just briefly.
 8 A. Okay. It's a -- it's a -- I'm
 9 trying to think of the words to convey to you
 10 so that you'll understand --
 11 Q. I appreciate that.
 12 A. -- it's -- it's not an ordinary
 13 machine. It's a machine which holds parts
 14 and has a hopper and has a series of conveyor
 15 belts and it has a control box too and a
 16 platform to hold a robot and the parts. It
 17 circulates the parts into position for a
 18 robot, smaller robot, to pick the parts up
 19 and do whatever. Could be assembly or --
 20 Q. And what was the name of the
 21 trade show you were planning on taking the
 22 machine to?
 23 A. The Dayton Industrial Show.
 24 Q. Where is that held? In Dayton I

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1 know but --
 2 A. Yeah. They have a convention
 3 center there.
 4 Q. -- convention center? When is
 5 that held or when was this particular show
 6 held?
 7 A. This was held -- I believe my
 8 phone call with Robert Mills was asking if
 9 they were going to send me a check and he
 10 said -- it was the day after that. It was
 11 something like November 2nd or 3rd of 2000.
 12 Q. So does that tell me when the
 13 Dayton trade was that year?
 14 A. Yes.
 15 Q. Just when was the Dayton trade
 16 show? I'm sorry.
 17 A. November 2nd or 3rd of 2000.
 18 Q. Now, you had mentioned a letter
 19 from Mr. Hughes and now a phone call from
 20 Mr. Mills, is that correct?
 21 A. A letter from Mr. Hughes, and
 22 then what was happening at this time is they
 23 would not send me a check on time and they
 24 would -- eventually I would have to call them

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1 to say where's my check.
 2 Q. And that was one of the calls in
 3 early November 2000?
 4 A. Right. Right.
 5 Q. You were paid your November 2000
 6 benefit at some point in time, correct?
 7 A. At some point in time, yes.
 8 Q. And, in fact, at some point in
 9 time you've been paid all the benefits up to
 10 the time we sit here today, is that correct?
 11 MR. ROBERTS: Objection.
 12 Misstates facts. Go ahead.
 13 A. No, it's not correct.
 14 Q. What monies are currently owed
 15 to you?
 16 A. There's an issue about the
 17 waiver premium which I've been paying waiver
 18 of premium or I've been paying my premiums
 19 for all these years and I'm sure it's 60, 70,
 20 80 thousand dollars that I believe should be
 21 refunded to me and that has -- that's an
 22 issue in this trial.
 23 Q. Anything else?
 24 A. Other than interest, I can't

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1 think of anything on -- on your -- some of
 2 your checks were -- which were not timely.
 3 Q. But I'm saying timeliness aside,
 4 and I know that you say some of them weren't
 5 timely. Ultimately, as we sit here today,
 6 you've been paid all the benefits other than
 7 the waiver of premium benefits and whatever
 8 interest is owed on those payments, is that
 9 correct?

10 A. Eventually with the phone calls
 11 and letters I received them at some point
 12 during the month or the next month.

13 Q. So the answer's yes but you
 14 don't believe they were timely paid.

15 A. I know they weren't timely paid,
 16 yes.

17 Q. Yes. Okay. Did you continue to
 18 develop this -- what do you call the machine
 19 by the way is there a shorthand --

20 A. I -- robotics vision feeder,
 21 R-V-F.

22 Q. Had you prepared any marketing
 23 materials relating to the robotics vision
 24 feeder?

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1 MR. ROBERTS: Objection. Vague.
 2 Go ahead.

3 A. Yes, I have.

4 Q. What kind of marketing
 5 materials?

6 MR. ROBERTS: Objection. Go
 7 ahead.

8 A. A two-page brochure or just a
 9 list of features.

10 Q. Was this a three color brochure
 11 or just mimeographed sheets or -- if there's
 12 such a thing.

13 A. It's a color something I did or
 14 had done. It was on two pages and it was
 15 color.

16 Q. When did you have that brochure
 17 made?

18 A. I believe shortly before this
 19 trade show.

20 Q. Do you still have copies of the
 21 brochure?

22 A. I may. I don't know.

23 Q. After you closed the Red Bank
 24 shop did you continue to develop the RVF?

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1 A. No.

2 Q. Once your benefits had been
 3 paid, why did you not start developing the
 4 RVF again?

5 A. Because I had to start paying
 6 attorneys at that time to ward off DMS,
 7 Jefferson-Pilot.

8 Q. Which attorneys are you talking
 9 about?

10 A. Talking about Charles Melville
 11 and Clint Miller.

12 Q. Anyone else?

13 A. Not that I -- not that I can
 14 recall.

15 Q. At some point in time you
 16 retained an attorney named John Spiegel in
 17 Miami --

18 A. Yes.

19 Q. -- correct?

20 A. That's correct.

21 Q. Did you pay him?

22 A. Did I pay him?

23 Q. Yes.

24 A. Did I pay him?

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1 Q. Yes. You said attorney's fees
 2 were a problem for you. I want to know did
 3 you pay John Spiegel for his work?

4 A. No. He -- he -- he said he was
 5 going to bill me and he didn't.

6 Q. So you expected to pay --

7 A. Paid to go down and see him. I
 8 paid for a trip to Florida.

9 Q. Well, that was for your trip.

10 That didn't go into Mr. Spiegel's pocket to
 11 your knowledge, did it?

12 A. No, but it came out of my pocket
 13 which was money couldn't use on -- if I was
 14 -- I wasn't capable of working anyway.

15 Q. Did you ever call Mr. Spiegel
 16 and say you haven't sent me a bill?

17 MR. ROBERTS: Objection. You
 18 don't need to answer that. It's
 19 attorney/client privilege. Chris, you don't
 20 need to answer that.

21 DEPONENT: I'm not going to
 22 answer it.

23 MR. ROBERTS: Okay.

24 DEPONENT: It's kind of a smart

9 (Pages 33 to 36)

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1 question.
 2 MR. ROBERTS: Again.
 3 MR. MEAGHER: My questions
 4 aren't intended to be smart or insult you,
 5 Mr. Kearney. I'm just trying to get
 6 information.
 7 MR. ROBERTS: Well, the
 8 genuineness in that comment is -- is not
 9 something we necessarily agree with but,
 10 Chris, if he's being sarcastic to you, you
 11 just point it out, but as far as
 12 attorney/client question that he asked that
 13 he knows called for attorney/client
 14 communications, you don't answer that.
 15 DEPONENT: Yes. Right.
 16 Q. Did you expect to receive a bill
 17 from Mr. Spiegel for the work he performed on
 18 your behalf?
 19 MR. ROBERTS: Objection to the
 20 extent that calls for you to answer this
 21 question based on things you communicate
 22 between Mr. Spiegel and yourself, don't
 23 answer.
 24 DEPONENT: Yeah. I think that's

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1 attorney/client privilege.
 2 MR. MEAGHER: You're instructing
 3 him not to answer that question then,
 4 counsel?
 5 MR. ROBERTS: If he thinks that
 6 calls for attorney/client information to be
 7 disclosed then absolutely, counsel.
 8 Q. So because of the attorney's
 9 fees you were incurring in your fight with
 10 DMS and Jefferson-Pilot you were unable to
 11 continue developing the RVF, is that correct?
 12 MR. ROBERTS: Objection.
 13 A. No. I suffer from major
 14 depression and my depression was aggravated
 15 and accelerated during that time of having to
 16 move both my shop and my residence, which was
 17 just a one bedroom apartment, into my
 18 mother's basement or it was a shared home,
 19 but there was a whole lot to do to -- to just
 20 get all that and -- and at the same time I
 21 was being asked for thousands of pages of
 22 documents by DMS. I spent a lot of time at
 23 the photo copier as much as -- as I could. I
 24 was depressed.

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1 Q. So when the Red Bank shop closed
 2 Kenwood Technologies moved into your mother's
 3 basement, is that the location?
 4 A. The office did, yes, and
 5 equipment.
 6 Q. Was it a working shop in the
 7 basement?
 8 A. No.
 9 Q. It was like storage, you just
 10 put everything in there?
 11 A. No, I had my office there,
 12 Kenwood -- Kenwood Technology's office.
 13 Q. Describe the office to me. What
 14 did you have there in your mother's basement?
 15 A. Okay.
 16 Q. Okay.
 17 A. I had a desk, a computer table,
 18 a computer, fax machine, couple file
 19 cabinets, I had all the office supplies,
 20 paper, the pencils, etc., and I -- I think I
 21 had some -- some signs I had printed up for
 22 the trade show in that office as well.
 23 Q. At the time -- I'm sorry.
 24 A. That's not an all inclusive

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1 list. I -- you know, that's some of the
 2 things that were there.
 3 Q. What happened to the RVF?
 4 A. The RVF went into the garage of
 5 the house or -- and the other equipment was
 6 put in storage.
 7 Q. Where was the storage located?
 8 A. In Wooster, Ohio.
 9 Q. Like did you -- did Kenwood
 10 Technologies rent a storage facility or
 11 something?
 12 A. Yes.
 13 Q. Do you remember the name of the
 14 storage facility?
 15 A. No. I can't remember their
 16 name.
 17 Q. Does Kenwood Technologies still
 18 have that facility?
 19 A. No.
 20 Q. When did they get rid of that
 21 facility?
 22 A. Somewhere in the 2002 or 2003.
 23 Q. Why?
 24 A. Well, I had to sell some of my

10 (Pages 37 to 40)

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1 Kenwood Technologies has no other employees
2 other than you currently, correct?

3 A. Correct.

4 Q. It hasn't since the closure of
5 the Red Bank office, is that fair to say?

6 A. That's fair to say.

7 Q. Is the machine still in the
8 garage, the RVF?

9 A. Yes, it is.

10 Q. Disassembled or assembled?

11 A. It's assembled to the degree as
12 I told you. The -- some of the shielding is
13 not on.

14 Q. So you had no purchase orders
15 for that machine. You were just getting
16 ready to show it, correct?

17 A. I had taken it to a previous
18 show and I had a lot of interest in it. I
19 had no purchase orders.

20 Q. Do you recall any of the people
21 or companies that showed interest at the
22 previous trade show? I take it that was
23 before November 2000?

24 A. Yes, it was before

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1 November 2000. Boston Scientific, Baxter
2 Healthcare, some of the big names in
3 pharmaceuticals.

4 Q. But since 2000 you have not made
5 any attempt to contact those companies, is
6 that correct?

7 A. That's correct.

8 Q. What was your role in the
9 manufacture of that machine you described,
10 the RVF?

11 A. My role was that I developed the
12 concept of that, did some crude drawings,
13 hand sketches and some crude CAD drawings and
14 had some assistance from Don Dayton to make
15 the drawings professional, and I designed the
16 machine with the help of Don Dayton.

17 Q. I'm sorry. You finished?

18 A. Yes.

19 Q. All of your design knowledge was
20 picked up on the job through life experience
21 rather than through any technical training
22 courses, is that correct?

23 A. That's correct.

24 Q. Have you collaborated with any

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1 other electrical engineers for designing
2 machines in the past three years?

3 A. No, I haven't. I've talked to
4 -- well, actually, you mentioned suppliers.
5 I can remember talking to one or two
6 electrical contractors in the Wooster area.

7 Q. When was the last time?

8 A. Probably when the lawsuit
9 started.

10 Q. Back in 2002?

11 A. You know, I'd have to refer to
12 my claim notes that -- I'd have to refer to
13 the notes that I sent in to you guys.

14 Q. You don't recall when the
15 lawsuit started?

16 MR. ROBERTS: Objection.

17 A. Oh, I do recall when the lawsuit
18 started because it was 4th of July --

19 Q. In 2002?

20 A. -- 2002.

21 Q. Right. Do you currently feel
22 any restriction or limitation in your ability
23 to travel?

24 A. Yes, I do.

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1 Q. Describe that for me, please.

2 A. Well, I had a heart attack two
3 weeks ago and I had stents, emergency surgery
4 or emergency angioplasty. I'm on multiple
5 drugs and I -- I'm supposed to right now to
6 be very restrictive. I had my wife drive me
7 down here.

8 Q. You attended a deposition taken
9 of one of your treating physicians in this
10 case after this angioplasty, is that correct?

11 A. That's correct.

12 Q. How far away was the location of
13 that deposition from your home?

14 A. About 20 minutes and my wife
15 drove me up to that as well.

16 Q. Did she also attend the
17 deposition?

18 A. No.

19 Q. How long was it?

20 A. The deposition?

21 Q. Yes.

22 A. It was about 25 minutes.

23 Q. How many days after your
24 angioplasty was the deposition?

17 (Pages 65 to 68)

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1 A. Six, maybe.

2 Q. Now, you were represented by
3 counsel at this deposition, correct?

4 A. No. That's the reason I went
5 because my -- I -- I couldn't afford to pay
6 Mike to come up there so he listened in by
7 phone, but I wanted to make sure that he
8 could -- there was a phone line available and
9 that he could object if -- if need be, so I
10 -- otherwise, I probably wouldn't have gone.

11 Q. But you were concerned that
12 Mr. Roberts might not be able to take care of
13 those issues?

14 A. Yes. My doctor didn't even have
15 a speaker phone. I had to provide my cell
16 phone and so --

17 Q. Prior to the angioplasty. I'm
18 sorry. When did that occur? Do you have a
19 date for me?

20 A. June 1st, 2007.

21 Q. How long were you in the
22 hospital?

23 A. Four days.

24 Q. And, I'm sorry, you may have

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1 pain that would go away on the way and I'd

2 just turn around and come back but it

3 continued. And so the pain started in my

4 right shoulder and it was in this arm for

5 maybe an hour and then it spread, and in the

6 hospital they -- they wanted me to go home.

7 They gave me a shot of morphine and I -- they

8 gave me another shot of, I think, Demerol and

9 nothing worked and they -- but they, said,

10 well, it's not going to work right away or it

11 wouldn't take away all your pain. So twice

12 they asked me to go home and twice I said to

13 the doctor, I said, I can't go home this pain

14 is too severe. And then not too -- not too

15 long after that I was probably in the

16 emergency room two hours and then I started

17 getting pain in my left arm and I had -- and

18 I need -- I asked for antacids and I think

19 they finally recognized this is a heart

20 attack and did an EKG and then they started

21 rushing me around.

22 Q. Since the inception of the

23 lawsuit in July 2002 and prior to your having

24 these symptoms that led to the angioplasty,

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1 told me the medications you're under?

2 MR. ROBERTS: For the heart or
3 all?

4 MR. MEAGHER: Heart.

5 A. The heart. I'll try, but
6 there's a drug called Zocor, there's a drug
7 called low -- Lowpre (sic), I believe, and
8 there's two -- two other drugs and I can't
9 recall their name.

10 Q. Prior to having the -- well,
11 what were your symptoms that led you to the
12 hospital or were you there for a checkup?
13 How did that occur?

14 A. I felt extreme pain in my right
15 shoulder which is already injured. My right
16 shoulder -- my rotator cuff is torn. I had
17 MRI on that and was scheduled for surgery,
18 which I hadn't gone through, and I had severe
19 pain in my right shoulder, very severe and I
20 thought it was my rotator cuff so I drove
21 myself to the hospital. It was two in the
22 morning and my wife would have taken me but
23 we have a young baby and -- or young child
24 and I just thought it was -- it might be some

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1 did you have restrictions and limitations in
2 your ability to travel?

3 MR. ROBERTS: Objection. Go
4 ahead.

5 A. Common sense restrictions, and I
6 had restrictions, limitations in that if I
7 traveled somewhere I knew that for a couple
8 days I would be totally unable to do anything
9 else.

10 Q. Why is that?

11 A. Fatigue.

12 Q. This is a physical -- physical
13 fatigue?

14 A. I don't -- well, I don't know.

15 It feels physical but it might be from my --
16 from the major depression, I believe,
17 distress and --

18 Q. Any other restrictions other
19 than -- I didn't understand what you meant by
20 common sense restrictions.

21 MR. ROBERTS: Is that a
22 question?

23 MR. MEAGHER: Yes.

24 Q. Please explain.

18 (Pages 69 to 72)

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1 and answered. Look at the deposition
 2 transcript May 10, 2004, counsel.
 3 MR. MEAGHER: I didn't get the
 4 terms of the settlement of the Grote and I
 5 would like to know what -- what it was.
 6 Q. Did you pay them? Did they pay
 7 you?
 8 MR. ROBERTS: Objection.
 9 Q. How did it end?
 10 MR. ROBERTS: Relevance. How
 11 does this relate to his claims that are
 12 pending in this lawsuit, counsel? How?
 13 MR. MEAGHER: I'm not going --
 14 MR. ROBERTS: Do me a favor --
 15 MR. MEAGHER: I don't need to
 16 explain to it to you.
 17 MR. ROBERTS: Okay. It's
 18 irrelevant to the claims in this lawsuit,
 19 it's been asked and answered, it's likely
 20 subject to a confidentiality agreement.
 21 MR. MEAGHER: I haven't heard
 22 that at all.
 23 Q. What was the settlement?
 24 A. Well, it probably is like Mike

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1 said subject to --
 2 MR. ROBERTS: Do you know one
 3 way or the other? Can you sit here today and
 4 say it's not confidential?
 5 DEPONENT: No.
 6 MR. ROBERTS: Okay. Then --
 7 DEPONENT: It's 10 years ago.
 8 MR. ROBERTS: -- then we're not
 9 going to answer that question today. We'll
 10 find that question out and we'll give your
 11 answer in interrogatory.
 12 MR. MEAGHER: Well, it's in
 13 1997, is that when the settlement was?
 14 MR. ROBERTS: So it's irrelevant
 15 is what you're saying.
 16 Q. Can you answer my question,
 17 please?
 18 A. I'm just thinking. It was '97
 19 or '96 or '98.
 20 Q. And you declared personal
 21 bankruptcy when, in 1999?
 22 A. No.
 23 Q. When?
 24 A. 1998 or '97.

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1 Q. Did the Grote lawsuit play a
 2 role in you declaring personal bankruptcy?
 3 A. I'm sure it played some part in
 4 it.
 5 Q. Who was your attorney on the
 6 Grote lawsuit?
 7 A. Charles Melville.
 8 Q. Is one of your claims in this
 9 lawsuit that JP and/or DMS contacted
 10 customers and damaged your business?
 11 MR. ROBERTS: Objection. Asked
 12 and answered. Go ahead.
 13 A. I -- I don't know, you know, how
 14 this formally we -- we hadn't even talked
 15 about our bad faith claim, I think, because
 16 we haven't got all the -- we haven't got all
 17 the discovery from you, so we haven't made
 18 all the -- put all the links together, but
 19 what was your question again?
 20 Q. As you sit here today, do you
 21 believe that JP and/or DMS contacted
 22 customers and damaged your business?
 23 MR. ROBERTS: You're including
 24 their vendors and agents in that question,

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1 counsel? You including the surveillance
 2 teams that were hired?
 3 MR. MEAGHER: Well, I object to
 4 coaching but --
 5 MR. ROBERTS: I'm not coaching.
 6 I just want to get your question clear. If
 7 you want a correct answer, let's get the
 8 question clear. Are you talking about Bob
 9 Mills, William Hughes or are you talking
 10 about the investigators they hired in
 11 addition?
 12 MR. MEAGHER: I am. Let me
 13 rephrase it, maybe it'll get rid of the
 14 objection.
 15 Q. As you sit here today, do you
 16 believe that JP and/or DMS or anyone acting
 17 on their behalf contacted customers of your
 18 business and damaged your business?
 19 A. Absolutely.
 20 Q. Who did they contact?
 21 A. You have a list of the
 22 companies. I don't recall off the top of my
 23 head. Even my own principals. You burned my
 24 bridges to any successful sales future if I

21 (Pages 81 to 84)

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1 Q. And I think it was after your
2 initial session of your deposition that that
3 was produced to you.
4 A. Yes.
5 Q. So what happened with the
6 business relationship -- well, who were you
7 working for or as at the time of this
8 conversation with International Fine
9 Blanking?
10 A. I was working for -- with
11 Kenwood Technology Group.
12 Q. And what did International fine
13 Blanking do with Kenwood Technology Group?
14 A. Well, they started refusing me
15 opportunities to quote on other projects.
16 Q. So did you have any ongoing
17 projects with International Fine Blanking?
18 A. I think I already -- at the time
19 I had -- I had orders to fulfill. I don't
20 think that the orders were placed but the
21 lead time was -- was six, eight, 10 months
22 something like that.
23 Q. Did anyone tell you that it was
24 this conversation with the investigator that

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1 led to them refusing for you to be able to
2 submit proposals?
3 A. No, of course not.
4 Q. Did International Fine Blanking
5 work with Grote at all?
6 A. No, sir.
7 Q. Were they aware of that lawsuit?
8 A. I don't know.
9 (Exhibit 1 was marked for identification.)
10 Q. You stated that you believed
11 that DMS and JP had gone behind your back in
12 order to contact these people, is that
13 correct?
14 A. That's correct.
15 Q. You were aware that throughout
16 your claim that there was claims
17 investigations that would occur from time to
18 time on your claim?
19 MR. ROBERTS: Objection. Go
20 ahead.
21 A. When DMS took over there was
22 constant interaction, constant requests and I
23 had, you know, previously from JP a few.
24 Q. And, in fact, you signed

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1 releases with regard to obtaining payment of
2 your benefits --
3 MR. ROBERTS: Objection.
4 Q. -- correct?
5 MR. ROBERTS: Objection. Go
6 ahead.
7 A. When you say releases, what do
8 you mean, two different releases or one?
9 Q. Well, let's start broad. Any
10 releases. Did you sign any releases with
11 regard to the insurer's and DMS's ability to
12 investigate your claim?
13 MR. ROBERTS: Objection.
14 Misstating facts as to release of claims. Go
15 ahead.
16 A. I did sign a limited release
17 with Jefferson-Pilot almost every month and
18 then DMS forced me to sign a big broad
19 general authorization by -- by refusing to
20 pay my benefit until I signed it.
21 Q. So did you sign one?
22 MR. ROBERTS: Objection. Go
23 ahead. Asked and answered.
24 A. I signed it under duress.

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1 Q. Did you contact any lawyer to
2 represent you at that time?
3 MR. ROBERTS: Objection. That
4 requires attorney/client privilege.
5 Q. I'm not asking about any
6 communication. I'm saying that since you
7 felt you were under duress what steps, if
8 any, did you take to protect yourself from
9 such actions?
10 MR. ROBERTS: As he recalls
11 today from 10 years ago?
12 MR. MEAGHER: Are you telling
13 him not to remember, counsel? Please.
14 MR. ROBERTS: Did you hear me
15 say that, counsel? I mean, your question
16 today in 2007 is the authorization he was
17 required to sign back in '97, '98 or is it
18 last month's authorization, which one? Do
19 you want a correct answer?
20 MR. MEAGHER: Do you have a
21 question? Do you have a question for me
22 because I don't have to answer his question
23 if he doesn't understand.
24 MR. ROBERTS: Okay. Well, your

23 (Pages 89 to 92)

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1 professionalism is noted on the record.
 2 MR. MEAGHER: Yeah, I know that,
 3 counsel. You said --
 4 A. If you don't mind repeating.
 5 Q. I'll repeat it. That's fine,
 6 Mr. Kearney.
 7 A. Sure.
 8 Q. With regard -- you said you
 9 signed a release under duress --
 10 A. Yes.
 11 Q. -- and I'm saying what actions,
 12 if any, did you take to try to prevent that
 13 from occurring?
 14 A. I tried to contact
 15 Jefferson-Pilot but they wouldn't take my
 16 calls. They just referred me back to Robert
 17 Mills. I did have an attorney that I was
 18 speaking with to give me advice.
 19 Q. Who was that?
 20 A. I believe it was Clint Miller.
 21 Q. So at the time of your signing
 22 the DMS release you were represented by
 23 Mr. Miller?
 24 MR. ROBERTS: Objection.

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1 A. No.
 2 MR. ROBERTS: That's not what
 3 his testimony was. Go ahead.
 4 A. No. I was not represented by
 5 Mr. Miller. I consulted Mr. Miller.
 6 Q. Okay. Let me hand you composite
 7 Exhibit 1.
 8 A. Okay.
 9 Q. And could you please look
 10 through that document --
 11 MR. ROBERTS: Hold on. I want
 12 to review this document before the witness
 13 answers questions on it. You just handed him
 14 a 50-page document that I've not seen prior
 15 to the deposition.
 16 MR. MEAGHER: You have seen all
 17 these pages.
 18 MR. ROBERTS: Well, I want to
 19 make sure of that, do you mind, counsel?
 20 MR. MEAGHER: I've handed you a
 21 copy and that's fine.
 22 MR. ROBERTS: Thank you.
 23 MR. MEAGHER: Let me ask a
 24 question.

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1 MR. ROBERTS: No. I'm going to
 2 take a moment to look at these first.
 3 MR. MEAGHER: Well, you can't
 4 stop me from asking a question then you can
 5 say wait.
 6 MR. ROBERTS: Chris --
 7 MR. MEAGHER: Don't answer it.
 8 Fine.
 9 MR. ROBERTS: -- don't answer it
 10 until I'm done.
 11 DEPONENT: I've got to review it
 12 too but --
 13 MR. MEAGHER: Yeah, because I'm
 14 asking you a very specific question.
 15 A. Okay.
 16 Q. I'm not going to ask you to read
 17 every single thing. All I want to know is
 18 with regard to Plaintiff's Exhibit 1, which
 19 is a composite that I put together, can you
 20 take a look at the signatures that purport to
 21 be that of Christopher L. Kearney and tell me
 22 whether you believe any of them are not your
 23 signature?
 24 MR. ROBERTS: Hold on, Chris.

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1 Don't answer that question until I tell you.
 2 DEPONENT: Are you --
 3 MR. ROBERTS: Chris.
 4 DEPONENT: Well, I wasn't going
 5 to answer but --
 6 MR. MEAGHER: Did you understand
 7 my question?
 8 MR. ROBERTS: Hold on a second,
 9 Chris.
 10 DEPONENT: No. I didn't know if
 11 you meant for me to read this whole 50
 12 pages --
 13 Q. No.
 14 A. -- or the first page.
 15 Q. I want you to look at -- I want
 16 you to look at each page and tell me whether
 17 the signature that purports to be that of
 18 Christopher L. Kearney, you, is actually your
 19 signature or you say, no, this is not my
 20 signature.
 21 A. Oh, you want me to look at each
 22 page. That's what I was asking you.
 23 Q. Yes. The signature pages.
 24 A. Fifty pages, okay. Start with

24 (Pages 93 to 96)

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1 the first stage. These are my signatures.
 2 Q. Okay.
 3 A. Second page, that looks like my
 4 signature.
 5 Q. Yeah, my question actually was,
 6 tell me which one of these do you not believe
 7 is your signature? If you remain silent
 8 about it, we'll assume that your answer is it
 9 is your signature.
 10 A. Okay.
 11 Q. That way the court reporter
 12 doesn't have to work as hard.
 13 MR. ROBERTS: Chris, answer any
 14 way you want. If you need to affirm by
 15 saying each page, go ahead and do that.
 16 MR. MEAGHER: Well, I point out
 17 this is not your deposition, it's mine. I've
 18 asked him the question.
 19 MR. ROBERTS: That's fine.
 20 Point out whatever you want. Chris, if you
 21 want to do it your way, do it your way.
 22 MR. MEAGHER: It'll just take
 23 longer, and that's fine, we have all the time
 24 in the world.

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1 DEPONENT: Well, you know, I
 2 mean, your guys take forever reading through
 3 a 10 page document, to take 45 minutes.
 4 Q. Well, I'm just asking you about
 5 your signature --
 6 A. You're hurrying me up here --
 7 MR. ROBERTS: Chris, don't go to
 8 his level.
 9 DEPONENT: Okay.
 10 MR. ROBERTS: Just answer the
 11 question the way you desire.
 12 A. The second page is my signature.
 13 Q. If you want you can refer to the
 14 bates numbers --
 15 A. Okay.
 16 Q. -- at the bottom right-hand
 17 corner.
 18 A. Sure. 978, that's my signature.
 19 982, that's my signature. 984, it appears to
 20 be my signature. 988 is my signature. 993,
 21 that's my signature. 591 is my signature.
 22 589 seems to be the same page, it's my
 23 signature. 2797, that's my signature. 995,
 24 that's my signature. 97 -- 997, that's my

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1 signature. 999, that appears to be my
 2 signature. 1001, that appears to be my
 3 signature. 1003, it appears to be my
 4 signature. 1005, it appears to be my
 5 signature. 1007, it appears to be my
 6 signature. 1009, appears to be my signature.
 7 2768, it appears to be my signature. 1011,
 8 it appears to be my signature. 1013 appears
 9 to be my signature. 1015 appears to be my
 10 signature. 1017, it appears to be my
 11 signature. 1019, it appears to be my
 12 signature. 1021, it appears to be my
 13 signature. 1030 appears to be my signature.
 14 1035 appears to be my signature. 1037, it
 15 appears to be my signature. 1040, it appears
 16 to be my signature. 1042, it appears to be
 17 my signature. 1045, it appears to be my
 18 signature. 1049, it appears to be my
 19 signature. 1051, it appears to be my
 20 signature. 1053 it appears to be my
 21 signature. 1056, it appears to be my
 22 signature. 1058, it appears to be my
 23 signature. 1060, it appears to be my
 24 signature. 1062 it appears to be my

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1 signature. 1064 it appears to be my
 2 signature. 1066, it appears to be my
 3 signature. 1068, it appears to be my
 4 signature. 1070, it appears to be my
 5 signature. 1072, it appears to be my
 6 signature. 1074, it appears to be my
 7 signature. 1076, it appears to be my
 8 signature. 1078, it appears to be my
 9 signature. 1080, it appears to be my
 10 signature. 1082 appears to be my signature.
 11 1084, it appears to be my signature. 1086,
 12 it appears to be my signature. 1088, it
 13 appears to be my signature. 1090, it appears
 14 to be my signature. 1094, it appears to be
 15 my signature. I think these are all same --
 16 my doctor's statements each month. I made
 17 this many doctors statements. 1098 appears
 18 to be my signature. 1102, it appears to be
 19 my signature. 1103 A appears to be my
 20 signature. 1115, it appears to be my
 21 signature. 3120, it appears to be my
 22 signature, 118 -- 1118, 1118 A appears to be
 23 my signature. 1120 appears to be my
 24 signature. 3304 I signed this under duress.

25 (Pages 97 to 100)

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1 Q. Sir, does that appear to be your
2 signature on 3304?
3 A. It appears to be my signature.
4 MR. ROBERTS: Counsel, as you
5 know it's noon right now. I'm kind of
6 getting light headed. Can we get a break in
7 the next five or 10 minutes?
8 MR. MEAGHER: Sure. Let me just
9 finish this one line.
10 MR. ROBERTS: Five more minutes
11 before lunch?
12 MR. MEAGHER: I'll try.
13 MR. ROBERTS: Okay.
14 Q. Other than the International
15 Fine Blanking Company, any other customers
16 that you believe were improperly contacted
17 that cost you business?
18 A. International Fine Blanking was
19 my number one customer and one of only a few
20 with Kenwood Technology. Oh, I know another
21 one. Medical Safe Tech. You guys went up to
22 Indianapolis to question them.
23 Q. When did that occur?
24 A. When did they go up there?

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1 Q. Yes.
2 A. It's in your surveillance files.
3 Q. Do you know when?
4 MR. ROBERTS: Objection. Asked
5 and answered.
6 A. Do I know when?
7 Q. Yes.
8 A. Yes, I know when.
9 Q. When was it?
10 A. 19 -- it was the year 2000.
11 Q. When did you learn --
12 A. I believe it was March 2000.
13 Q. When did you learn of that
14 contact?
15 A. I learned of that contact after
16 my deposition here.
17 Q. And what -- how do you quantify
18 the business you lost from Medical Safe Tech?
19 A. I don't quantify it.
20 Q. Did you have any existing
21 contracts with them?
22 A. Yes, I did, and apparently
23 that's where my original back injury occurred
24 and apparently you guys were -- disbelieved

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1 my claim, were trying to go back 10 years and
2 substantiate my back injury.
3 Q. Have you ever told anyone you
4 were disabled when you weren't?
5 A. I have ever told anybody I'm
6 disabled when I'm not disabled?
7 Q. Right.
8 A. No.
9 Q. And conversely, have you ever
10 told anyone you were not disabled when you
11 were actually disabled?
12 MR. ROBERTS: Objection.
13 A. That question never came up.
14 You know, I wouldn't -- nobody asked me are
15 you disabled. It was just a question -- it
16 was -- people don't ask you are you disabled.
17 Q. But you've never told anyone you
18 were not disabled when, in fact, you believed
19 you were disabled?
20 MR. ROBERTS: Objection. Vague.
21 Go ahead.
22 Q. Have you?
23 MR. ROBERTS: Objection. Go
24 ahead.

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1 A. No. I would have told them the
2 truth.
3 MR. MEAGHER: Good place to
4 break for lunch?
5 MR. ROBERTS: Great.
6 VIDEOGRAPHER: Off the record.
7 MR. ROBERTS: Wait. Wait.
8 We're not off the record. Well, we're off
9 the video record. Go ahead.
10 VIDEOGRAPHER: Time is 12:03 and
11 29 seconds. We're off the record.
12 MR. ROBERTS: Earlier this --
13 this morning Mr. Ellis indicated that the
14 information I've been seeking for at least
15 eight months is in his possession. He
16 apparently has declined to produce it not
17 withstanding a November 2006 request and a
18 May 3, 2007 request and an e-mail request
19 last week that he completely ignored. It is
20 my understanding it's been in his possession,
21 he's just been ignoring my request for it.
22 Do you have that for me now, Mr. Ellis?
23 MR. ELLIS: I will have it
24 momentarily.